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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,936	06/27/2003	Joseph Musacchio	741287-30	4445
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NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER McCORMICK, GABRIELLE A	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 03/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/606,936

**Applicant(s)**

MUSACCHIO, JOSEPH

**Examiner**

GABRIELLE MCCORMICK

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 and 48-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 and 48-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the amendment filed on January 31, 2008.
2. Claims 1-12, 14-15, 17-19, 21, 23, 25-40, 42-44, 46, 48, 50-51, 53, 55-70, 72-74 and 76-78 have been amended.
3. Claims 79-82 have been added.
4. Claim 47 has been canceled.
5. Claims 1-46 and 48-82 are currently pending and have been examined.

### ***Drawings***

6. In the "Remarks", Applicant stated that replacement drawings were submitted. The Office does not have a copy of the drawings in order to examine with respect to the objection in the Office Action dated October 3, 2007. The Applicant is requested to resubmit said drawings.

### ***Miscellaneous***

7. The "Fee Transmittal for FY 2007" and "Petition for Extension of Time Under 37 CFR 1.136(a)" cite the applicant/inventor as "Jeremy Weintraub et al.". The Examiner notes that this is incorrect and the inventor/applicant of record for application 10/606936 is Joseph Musacchio.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 1, 5-17, 21, 28-42, 51 and 58-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vivona (US Pat. No. 5,960,407) in view of Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog").
10. **Claim 1, 21 and 51:** Vivona discloses
- *an employment salary database having current salary data with associated skill information, said current salary data including at least one of job listings and employment histories from resumes;* (C5; L26-33: current salaries are derived from want-ads (i.e., job listings)); C8; L25-36: "Filtered Classified Advertisement Database 28" contains entries based on key words (skills- see Table 1))
  - *a user interface module adapted to allow a user to input employment parameter information* (C4; L50: keyboard)
  - *a processor adapted to generate a functional matched data set by searching said employment salary database* (C13; L65 – C14; L12: Price Analyzer 30 performs regression analysis to determine salary (dependent variable) as a function of an independent variable).
11. Vivona does not disclose that a user enters a specific skill and the current salary data is based on the specific skill.
12. Almog, however, discloses entry of skill data into a profile (P[0052-0053] and Fig. 4 and generating salary data based on variables of the worker profile (P[0069]). Further, Almog discloses an employer querying the database for salary information for a job opening (P[0115]). Almog also discloses a user querying by varying fields of the entered records and generating new salary data. (P[0089]: As disclosed in Fig. 4, skill level is a field in a data record, thus salary data is generated as a result of entering changes to the skill level field.).
13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included generating salaries based on skills, as disclosed by Almog in the system disclosed by Vivona, for the motivation of providing a method of determining salaries based on qualifications (i.e., skills). Thus, an employer would be able to offer different salaries according to a worker's qualifications (Almog; P[0113]). Further, Vivona discloses determining

salary as a function of an independent variable, with years of experience as an example (C15; L41-43) and adds that other quality attributes may be used. (C19; L39-41). It is obvious in having disclosed a link between salary and skills (Table 1), that one of ordinary skill would apply the regression analysis to the combination of salary and skill data. It is further obvious that experience data can be broadly interpreted to inherently comprise skill data, thus generating a relationship between salary and skills.

14. Further, the regression analysis of Vivona is capable of using skill information as a parameter for the analysis of salaries where skills become the independent variable. The system would perform with the predictable result of computing a correlation between salary data and skill data.
15. **Claims 5-10, 28-35 and 58-65:** Vivona further discloses *job titles*, (Table 1: "Type of Job" and "Position Category"), *location* (C6; L5-8), and generating salary data (price characteristics) based on differing types of jobs (C16; L7-19: thus narrowing based on job type). Vivona does not disclose salary data based on an entered location.
16. Almog, however, discloses that a user can query for a change in salary based on location (P{0041} and [0094]).
17. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included generating salary information based on location, as disclosed by Almog, in the system of Vivona for the motivation of associating cost of living for differing locations (Almog; P{0071}) or for allowing a worker to compare salaries for differing locations. (Almog; P{0041}). It is obvious that such information would be a useful expansion of the system of Vivona as Vivona discloses choosing salary information sources that represent "a desired geographic region" (C6; L5-6).
18. Further, the regression analysis of Vivona is capable of using location information as a parameter for the analysis of salaries where location becomes the independent variable. The system would perform with the predictable result of computing a correlation between salary data and location data.

19. **Claims 11-14, 36-39 and 66-69:** Vivona discloses mining data from classified advertisements ( a jobs database) from the World Wide Web (distributed network). (C6; L7-10) The "Acquisition and Filtering Module" selects (i.e., mines) the signals and stores them. (C6; L35-45).
20. **Claims 15, 40 and 70:** Vivona does not disclose mining data from a resume database, however, Almog discloses data entered and organized like a CV (i.e., resume) where the data entered is that typically provided in a resume, hence creating a resume database. (P[0050-0054]). The information is mined in order to provide salary feedback to users. (P[011-0012]).
21. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included resumes, as disclosed by Almog, in the system of Vivona for the motivation of providing an additional source of compensation information.
22. Further, Vivona discloses gathering data from web pages (C6; L7-8) based on key words (C6; L46-57), therefore the system of Vivona is capable of mining data from a web page that contains resume data with the predictable result of finding key words that relate job information and salary information.
23. **Claims 16, 41 and 71:** Vivona discloses the average market price (C11; L55-58: For salary information, it is inherent that the average price is an average annual salary. See also Fig. 3-6 where salary data is graphed).
24. **Claims 17, 42 and 72:** Vivona discloses that deriving information from a classified ad is quicker than deriving information from a survey, but does not explicitly state that the salary is periodically updated. (C4; L30-33).
25. Almog, however, states that databases are updated in real time (P[0039]).
26. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included real time updating, as disclosed by Almog, in the system of Vivona for the motivation of providing quicker access to salary data. It is obvious to update a database in order for the database to remain useful.
27. **Claims 79 and 80:** Vivona discloses *performing a relational match on the current salary data.* (C15; L48-49).

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28. **Claims 2-4, 22-27, 46, 48-50, 52-57 and 76-78** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vivona (US Pat. No. 5,960,407) in view of Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog") in further view of Davis ("The future of salary surveys when jobs disappear". Compensation and Benefits Review. Saranac Lake: Jan/Feb 1997. Vol. 29, Iss. 1; pg. 18).
29. **Claims 2-4, 22-27, 46, 48-50, 52-57 and 76-78:** Vivona discloses
- *an employment salary database having current salary data, said current salary data being devoid of survey salary data;* (C5; L26-33: current salaries are derived from want-ads)
  - *establishing categories by dividing at least a portion of said current salary data into ranges* (C15; L41-49: salary amounts are calculated based on differing years of experience)
  - *user interface module adapted to allow input of employment parameter information* (C4; L50: keyboard)
  - *a processor* (C13; L65 – C14; L12: Price Analyzer 30 performs regression analysis to determine salary (dependent variable) as a function of an independent variable).
30. Vivona does not disclose *at least one specific skill or a plurality of skill level categories or generate salary information based on said inputted skill level and salary data of one of said predetermined percentile salary ranges.*
31. Almog, however, discloses entry of skill level data into a profile (P[0052-0053] and Fig. 4 and generating salary data based on variables of the worker profile (P[0069]). Further, Almog discloses an employer querying the database for salary information for a job opening (P[0115]). Almog also discloses a user querying by varying fields of the entered records and generating new salary data. (P[0089]: As disclosed in Fig. 4, skill level is a field in a data record, thus salary data is generated as a result of entering changes to the skill level field.).
32. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included generating salaries based on skill levels, as disclosed by Almog in the system disclosed by Vivona, for the motivation of providing a method of determining salaries based on qualifications (i.e., skills). Thus, an employer would be able to offer different salaries

according to a worker's qualifications (Almog; P[0113]). Further, Vivona discloses determining salary as a function of an independent variable, with years of experience as an example (C15; L41-43) and adds that other quality attributes may be used. (C19; L39-41). It is obvious in having disclosed a link between salary and skills (Table 1), that one of ordinary skill would apply the regression analysis to the combination of salary and skill data. It is further obvious that experience data can be broadly interpreted to inherently comprise skill data, thus generating a relationship between salary and skills.

33. Further, the regression analysis of Vivona is capable of using skill information as a parameter for the analysis of salaries where skills become the independent variable. The system would perform with the predictable result of computing a correlation between salary data and skill data.
34. Davis, in page 2, paragraph 2, discloses "skill levels" and in Exhibit 9, discloses correlating skill level categories to percentile salary ranges.
35. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included correlating skill level categories to percentile salary ranges, as disclosed by Davis in the system disclosed by Vivona, for the motivation of providing a method of designing a compensation system that "is based on flexible work assignments related to employee skill levels..." (Davis; pg. 2; para. 2). As Vivona has already disclosed the correlation of salary data to varying years of experience, it is obvious to substitute experience with skill levels as an increase in experience often corresponds to increasing skill levels.
36. Therefore, the regression analysis of Vivona is capable of using skill level information as a parameter for the analysis of salaries where skill levels become the independent variable. The system would perform with the predictable result of computing a correlation between salary data and skill level data.



37. **Claims 18, 19, 43, 44, 73 and 74** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vivona (US Pat. No. 5,960,407) in view of Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog") in view of Davis ("The future of salary surveys when jobs disappear". Compensation and Benefits Review. Saranac Lake: Jan/Feb 1997. Vol. 29, Iss. 1; pg. 18) in further view of PR Newswire ("ComputerJobs.com Revolutionizes IT Career Management with New Skill Sites". PR Newswire. New York: Sep 22, 1999. pg.1).
38. **Claims 18, 19, 43, 44, 73 and 74:** Vivona discloses the average market price (C11; L55-58: For salary information, it is inherent that the average price is an average annual salary. See also Fig. 3-6 where salary data is graphed). Vivona does not disclose *a ticker adapted to render said generated employment salary information or ticker renders at least one of average salary direct labor hourly rate, highs and lows of said direct labor hourly rate, and amount of change in said direct labor hourly rate.*
39. PR Newswire, however, in page 2, paragraph 8, discloses a salary tracking ticker displaying "average salaries or hourly wages in a specific skill-set area".
40. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a salary tracking ticker, as disclosed by PR Newswire in the system disclosed by Vivona, for the motivation of "giving users timely information to gauge their own salary expectations." (PR Newswire; pg. 2; para. 8). Vivona discloses that "the salary amount warranted by a potential employee with a certain set of skills and a certain amount of experience" is valuable to companies seeking to make competitive salary offers. (Vivona; C5; L18-25). A ticker displaying the average salaries disclosed by Vivona provides a user-friendly graphical instrument to display information.
41. **Claims 81 and 82:** Vivona discloses displaying salary data as a function of an independent variable. (C15; L41-43) and using regression analysis to compare different jobs and different salaries (C16; L11-19), thus a change in the labor cost is inherently calculated.

42. **Claims 20, 45 and 75** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vivona (US Pat. No. 5,960,407) in view of Almog et al. (US Pub. No. 2002/0002479, hereafter referred to as "Almog") in view of Davis ("The future of salary surveys when jobs disappear". Compensation and Benefits Review. Saranac Lake: Jan/Feb 1997. Vol. 29, Iss. 1; pg. 18) in view of PR Newswire ("ComputerJobs.com Revolutionizes IT Career Management with New Skill Sites". PR Newswire, New York: Sep 22, 1999. pg.1), in further view of Knapp ("Why go it alone?" How. Cincinnati: Apr 2001. Vol. 16, Iss.2; pg. 28).
43. **Claims 20, 45 and 75:** Vivona does not disclose *an hourly pay rate that includes fees charged by an employment agency, and amount of fees charged by an employment agency as a percentage of an hourly pay rate.*
44. Knapp, however, in page 3, paragraph 1, discloses staffing agencies marking up hourly rates, where markups average about 30%.
45. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included employment agency fees coupled with an hourly rate, as disclosed by Knapp in the system disclosed by Vivona, for the motivation of displaying the profit a staffing agency makes. It is old and well known that employment agencies advertise job openings, therefore, this information would be part of the source information used by Vivona in its system. By displaying agency fees, users (either employers or seekers) would understand the fees involved with using an employment agency and would be able to adjust their salary offers/expectations accordingly.

### ***Response to Arguments***

46. Applicant's arguments with respect to claims 1, 21, 46, 48, 51 and 76 have been considered but are moot in view of the new ground(s) of rejection, as discussed above. As a result, the newly applied primary reference relies on salary data from want-ads where the value (i.e., salary) of a worker is derived from the combination of skills and experience that is intended to attract a job candidate, and hence reflect the "true market value of...labor." (Vivona; C5; L26-33). Almog et al., the newly applied secondary reference, relies on resume data supplied in real time by workers, inclusive of current and historical salary data. Both references teach a link between salary and skills.
47. The Amendment to the Specification (paragraph [0087]) filed January 31, 2008 is entered.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./  
Examiner, Art Unit 3629

/John G. Weiss/  
Supervisory Patent Examiner, Art Unit 3629